No. 10254

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

SEATTLE-FIRST NATIONAL BANK, a national banking association,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Eastern District of Washington Northern Division

ROTARY COLORPRINT, 880 FOLSOM ST., SAN FRANCISCO 50-10-8-48

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 218

SEATTLE-FIRST NATIONAL BANK, a national banking association,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

1. The plaintiff brings this action against the United States pursuant to the provisions of Section 1122(c) of the Revenue Act of 1926 amending paragraph twenty of section 24 of the Judicial Code, U. S. C. A. Title 28, Sec. 41(20).

2. Prior to December 28, 1935, the First National Bank of Seattle was a national banking association duly formed under the provisions of The National Bank Act.

3. The Spokane and Eastern Trust Company was a state bank and trust company organized and existing under the laws of the State of Washington. As a trust company it held in trust for certain beneficiaries certain bonds and stocks, the legal title to which was vested in it as trustee, executor, administrator, guardian or in other fiduciary capacities.

4. As a state bank the said Spokane and Eastern Trust Company likewise held certain real estate, including its banking premises and certain bonds and other securities, to all of which real estate, bonds and securities it held the legal title as a part of its corporate assets.

5. On December 28, 1935, pursuant to Sec. 331, Chapter 614, of the Act of August 23, 1935, U. S. C. A. Title 12, Sec. 34a, the First National Bank of Seattle and the Spokane and Eastern Trust Company consolidated, becoming, pursuant to such consolidation, Seattle-First [1*] National Bank, a national banking association, plaintiff herein.

6. Pursuant to this consolidation the corporate existence of each of the constituent banks participating in the consolidation was merged into and continued in the consolidated national banking association resulting therefrom, Seattle-First National Bank, and all the rights of the Spokane and Eastern Trust Company in the real estate and stock and bonds owned by it, the title to which it held as a part of its corporate assets, were, pursuant to said section of The National Bank Act, deemed to be transferred to and vested in the consolidated national banking association without any deed or other transfer, and the said Seattle-First National Bank became the owner thereof solely by operation of law. Likewise the consolidated national banking association, plaintiff herein, by virtue of such consolidation and without any order or other action on the

*Page numbering appearing at foot of page of original certified Transcript of Record.

part of any court or otherwise, became entitled to hold and enjoy the same and all rights of property as trustee, executor, administrator, guardian or other fiduciary as the Spokane and Eastern Trust Company held at the time of the consolidation, and the legal title to the said assets held by the Spokane and Eastern Trust Company, in trust as aforesaid, passed to the plaintiff herein by virtue of said consolidation solely by operation of law.

7. Thereafter the Treasury Department of the United States, through its Internal Revenue Service, made an examination of the assets held by the plaintiff as trustee, executor, administrator, guardian and in other fiduciary capacities which had formerly been held by the Spokane and Eastern Trust Company in a like capacity and of the real estate and other assets owned by the plaintiff which were formerly owned by the Spokane and Eastern Trust Company and asserted that the plaintiff as trustee had acquired the said assets held in the said trust accounts by a transfer taxable under the Revenue Acts of the United States and required the plaintiff to pay on account of said trust assets the sum of $673.88 by purchasing [2] and affixing to the various stocks and bonds and other instruments held as trust assets stamps in the said total amount, and the plaintiff did pay the said amount by purchasing said stamps and affixing the same to the said instruments. The Treasury Department of the United States likewise asserted that the plaintiff had acquired the real estate and banking premises, together with the bonds and other securities held

by it, as owned assets by a transfer taxable under the Revenue Acts of the United States and required the plaintiff to pay on account of said owned assets the sum of $1,057.60, consisting of a transfer tax upon the real estate and banking premises of $500, upon the bonds and securities of $457.60 and of a penalty in the sum of $100 by purchasing and affixing to the various records or instruments stamps in the said total amount of $957.60 and by paying the penalty of $100, and the plaintiff did pay the said amount by purchasing said stamps and affixing the same to the said instruments and paying the said penalty.

8. Payment of the said transfer taxes and penalty was made January 25, 1937.

9. On March 23, 1939, plaintiff filed a claim for refund of the said stamp taxes assessed upon the asserted transfer of the assets held by plaintiff in the trust accounts in the total sum of $673.88, together with interest thereon from the date of payment, January 25, 1937, and filed a further claim for the refund of the stamp taxes assessed upon the asserted transfer of the real estate, banking premises and other owned assets held by the plaintiff as owned assets in the total sum of $957.60, together with a refund of the penalty in the sum of $100 assessed and collected, together with interest thereon from date of payment, January 25, 1937.

10. On December 23, 1940, the said claims in the respective amounts of $673.88, together with interest thereon, and in the sum of $957.60, together with the penalty in the sum of $100, together with interest thereon, were rejected and refused. [3]

11. By reason of the premises the Treasury Department of the United States, through its Internal Revenue Service, has erroneously and illegally assessed and collected Internal Revenue taxes from the plaintiff, and has collected a penalty without authority of law, and the plaintiff is now entitled to recover the respective sums of $673.88, together with interest thereon from January 25, 1937, and the sum of $957.60, together with the penalty in the sum of $100, together with interest thereon from January 25, 1937.

Wherefore plaintiff demands judgment against the defendant, United States of America, in the sum of $1,631.48, together with the sum of $100, together with interest thereon from the date of payment thereof.

ARNOLD L. GRAVES
GRAVES, KIZER & GRAVES
Attorneys for Plaintiff
Post Office Address:
1224 Old National Bank Building
Spokane, Washington

(Duly verified.)

[Endorsed]: Filed Oct. 17, 1941. [4]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant United States of America, by Lyle Keith, United States Attorney for the Eastern District of Washington, and for answer to the complaint of the plaintiff herein, admits, denies and alleges as follows:

I.

For answer to paragraph 1 of the complaint, defendant admits the same.

II.

For answer to paragraph 2 of the complaint, defendant admits the same.

III.

For answer to paragraph 3 of the complaint, defendant admits the same.

IV.

For answer to paragraph 4 of the complaint, defendant admits the same.

V.

For answer to paragraph 5 of the complaint, defendant alleges that the Spokane and Eastern Trust Company was merged into the First National Bank of Seattle, under the corporate name Seattle-First National Bank, the plaintiff herein, and that such merger or consolidation was authorized by Section 34(a), Title 12, of the United States Code; that the

merger or consolidation was accomplished by a written agreement therefor entered into between the directors of each [5] of the banks under date of November 26, 1935, subject to approval and ratification by the shareholders and Comptroller of the Currency; that on or about December 24, 1935 all of the shareholders of the Trust Company met and ratified the agreement of merger and consolidation; that thereafter the Acting Comptroller of the Currency on December 28, 1935 certified that the directors and shareholders of both of the banks had complied with the Act approved November 7, 1918, as amended, and the banks had become consolidated and such consolidation was approved by said Comptroller on December 28, 1935. Except as thus admitted, qualified or explained, all allegations, matters and things contained in paragraph 5 of the complaint are denied.

VI.

For answer to paragraph 6 of the complaint, defendant alleges that the corporate existence of the Spokane and Eastern Trust Company was merged into the plaintiff and that the corporate bonds, stocks and realty to which the former held legal title in its individual and in fiduciary capacities were delivered and transferred, together with legal title thereto, to plaintiff in connection with the merger or consolidation of the two banking corporations; that this transfer of legal title did not occur solely or wholly by operation of law but as

a result of voluntary action initiated and undertaken by the directors and stockholders of each of the banks, as set forth above in answer to paragraph 5 of the complaint. Except as thus admitted, qualified or explained, all allegations, matters and things contained in paragraph 6 of the complaint are denied.

VII.

For answer to paragraph 7 of the complaint, defendant admits that an examination was made of plaintiff's assets following the merger or consolidation and that as a result, plaintiff was required to and did affix and cancel documentary stamps in the aggregate amount of $1,631.48 with respect to the transfer from the Spokane and Eastern Trust Company to plaintiff of the former's real estate holdings and [6] corporate stocks and bonds held by it in its individual and various trust capacities prior to said merger or consolidation. Defendant states that subsequent to January 25, 1937, plaintiff tendered as an offer in compromise of the criminal liability incurred under Section 802 of the Revenue Act of 1926 the sum of $100.00, which amount was accepted. Except as thus admitted, qualified or explained, all allegations, matters and things contained in paragraph 7 of the complaint are denied.

VIII.

For answer to paragraph 8 of the complaint, defendant admits that documentary stamps in the amount of $1,631.48 were affixed upon the necessary

records or documents, and cancelled on or about January 25, 1937. Except as thus admitted, qualified or explained, all allegations, matters and things contained in paragraph 8 of the complaint are denied.

IX.

For answer to paragraph 9 of the complaint, defendant admits that plaintiff filed claims for the refund of $673.88 and $957.60, plus an alleged penalty of $100.00 and interest, but states that said claims were filed on March 25, 1939 and not on March 23, 1939, as alleged by plaintiff. Defendant also denies that the amounts were assessed. Defendant states that plaintiff purchased stamps and in that manner paid the documentary stamp tax. Except as thus admitted, qualified or explained, all allegations, matters and things contained in paragraph 9 of the complaint are denied.

X.

For answer to paragraph 10 of the complaint, defendant admits the allegations therein contained, save and except that defendant denies that the amount of $100.00 represented a penalty but, as hereinbefore alleged, defendant states it was an amount paid in compromise of plaintiff's criminal liablity under Section 802 of the Revenue Act of 1926, incurred as a result of failure to affix the necessary stamps. [7]

XI.

For answer to paragraph 11 of the complaint, defendant denies that the taxes in question have

been erroneously or illegally assessed or collected, and denies that plaintiff is entitled to recover the sums set forth in paragraph 11 of the complaint, or any part thereof: Further answering said paragraph 11 of the complaint, defendant denies that the defendant is indebted to the plaintiff in any amount whatsoever.

Wherefore, defendant prays that the action be dismissed, and that the defendant recover its costs and disbursements herein.

LYLE KEITH
United States Attorney

Copy received this 28 day of February, 1942.
GRAVES, KIZER & GRAVES
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 28, 1942. [8]

[Title of District Court and Cause.]

PRE-TRIAL ORDER UNDER RULE 16

To Graves, Kizer & Graves, Attorneys for Plaintiff:

To Lyle Keith, Attorney for Defendant:

By virtue of the Pre-trial Rule 16 of the Rules of Civil Procedure for the District Courts of the United States, you are hereby directed to appear before the undersigned Judge of the above entitled Court on Tuesday, March 24, 1942, at nine-thirty o'clock A. M., in the Judge's Chambers, in the Post Office Building at Spokane, Washington, to consider:

(1) The simplification of the issues.

(2) The necessity or desirability of amendments to the pleadings.

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

(4) The limitation of expert witnesses.

(5) Such other matters as may be of aid in the disposition of the action.

The clerk of this Court is directed to forthwith serve this order upon the above named parties by mailing a copy thereof to their attorneys at the address disclosed by the record herein.

Dated this 12 day of March, 1942.

L. B. SCHWELLENBACH
United States District Judge

Copy received Mar. 14, 1942.

[Endorsed]: Filed Mar. 12, 1942. [9]

[Title of District Court and Cause.]

PRE-TRIAL ORDER

This cause duly came on for pre-trial hearing on March 25, 1942, before the undersigned judge of the above-entitled court pursuant to Rule 16 of Rules of Civil Procedure for the District Court of the United States; Graves, Kizer & Graves appearing as attorneys for plaintiff and Harvey Erickson, Assistant United States Attorney, appearing as attorney for defendant; and the court having examined the pleadings and having considered the

same and having heard the statements for both parties herein;

Now, Therefore, the court does hereby find as follows:

That on or about November 26, 1935, a written agreement was entered into by the First National Bank of Seattle and the Spokane and Eastern Trust Company, Spokane, Washington, signed by the directors of each, providing for the consolidation of the two banks under the corporate name of the Seattle-First National Bank, a national banking association, by the consolidation of the trust company and First National Bank of Seattle pursuant to Title 12, Section 34(a), USCA. This agreement contained a provision that it was made subject to ratification and approval by the stockholders.

That under date of November 26, 1935, the directors of the trust company published notice of a special meeting to be held to consider and determine whether the foregoing agreement should be ratified and confirmed and that on December 24, 1935, a special stockholders' meeting was held and all of the outstanding shares of the trust company were [10] represented in person or by proxy. It was unanimously resolved at this meeting that the agreement entered into between the directors of the two banks should be ratified and confirmed in that the consolidation should become effective upon approval thereof by the Controller of the Currency. The minutes recite that the secretary presented a waiver signed by all of the stockholders with respect to this meeting held December 24, 1935. On

December 28, 1935, Acting Controller of the Currency Awalt issued a certificate of approval wherein it was recited that it appeared that the directors and shareholders of both banks had complied with the Act of Congress approved November 7, 1918, as amended, and therefore the two banks had been consolidated under the charter of the First National Bank of Seattle and under the corporate title of the Seattle-First National Bank with an authorized capital of $8,000,000.

That the foregoing proceedings were authorized by Section 34 (a), Title 12, USCA, and resulted in the consolidation of the trust company into the plaintiff Seattle-First National Bank pursuant to the above statute, and accordingly there was effected by the agreement of November 26, 1935, and the shareholders' ratification thereof, followed by approval of the Controller of the Currency, a transfer of legal title to all corporate securities and real estate, legal title to which was formerly held in the name of the Spokane and Eastern Trust Company, either in its individual capacity or as a fiduciary in various capacities. No documentary stamps were purchased or affixed with respect to the transfer of legal title to such corporate securities and realty. Subsequently, a deputy collector examined the records of the bank, and as a result, documentary stamps in the amount of $1,631.48 were purchased and affixed to the appropriate records.

That the stamps were affixed and canceled on or about January 25, 1937, and thereafter the amount of $100.00 was tendered as an offer in compromise

of the criminal liability incurred under Section 802 of the Revenue Act of 1926 as a result of failure in the first instance to pay the aforesaid tax. [11]

On March 25, 1939, two claims for refund were filed—one in the amount of $673.88 and the other in the amount of $1,057.60, the latter amount comprising $957.60 tax and $100.00 as an alleged penalty. Interest is also claimed on these amounts.

It is further ordered that the plaintiff produce the original minutes of the Spokane and Eastern Trust Company of November 26, 1935, in which the directors of the Spokane and Eastern Trust Company entered into an agreement providing for the consolidation of the two banks under the corporate name of the Seattle-First National Bank and that the plaintiff shall also produce the original minutes of the meeting of the shareholders or stockholders taking place on December 24, 1935, in which it was unanimously resolved by the stockholders that the action taken by the directors should be ratified and confirmed.

Done in open court this 1st day of April, 1942.

L. B. SCHWELLENBACH
District Judge

Approved:

LYLE KEITH
HARVEY ERICKSON
Attorneys for Plaintiff
GRAVES, KIZER & GRAVES
Attorney for Defendant

[Endorsed]: Filed April 1, 1942. [12]

PLAINTIFF'S EXHIBIT "A"

C

Form 1924

Comptroller of the Currency
Organization Division
Charter No. 11280

Consol. No. 536

TREASURY DEPARTMENT
BUREAU OF THE COMPTROLLER
OF THE CURRENCY

Washington, D. C.,
December 28, 1935

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that the directors and shareholders of First National Bank of Seattle, located in the City of Seattle, in the County of King and State of Washington, and the directors and shareholders of Spokane and Eastern Trust Company, located in the City of Spokane, in the County of Spokane and State of Washington, have complied with all the provisions of an Act of Congress entitled "An Act to provide for the consolidation of National Banking Associations," approved November 7, 1918, as amended.

Now, Therefore, I, F. G. Awalt, Acting Comptroller of the Currency, do hereby certify that First National Bank of Seattle and Spokane and Eastern Trust Company have been consolidated under

the charter of First National Bank of Seattle and under the corporate title of "Seattle-First National Bank," with capital stock of Eight Million Dollars ($8,000,000), and that the consolidation is hereby approved. On the date of consolidation, the consolidated bank has two (2) branches, both located in the City of Seattle, which were branches of First National Bank of Seattle and which were in lawful operation on February 25, 1927.

In Testimony Whereof, witness my hand and Seal of Office this 28th day of December, 1935.

[Seal] F. G. AWALT,
Acting Comptroller of the Currency

HMV TBB

Treasury Department
Office of the
Comptroller of the Currency—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, F. G. Awalt, Acting Comptroller of the Currency, do hereby certify that the foregoing is a true and complete copy of the original certificate of F. G. Awalt, Acting Comptroller of the Currency, approving on December 28, 1935, under the Act of November 7, 1918, as amended, the consolidation of First National Bank of Seattle (Charter No. 11280), Seattle, Washington, and the Spokane and Eastern Trust Company, Spokane, Washington, under the charter of First National Bank of Seattle (Charter No.

11280) and under the corporate title of "Seattle-First National Bank," and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 29th day of January, A. D. 1936.

[Seal] F. G. AWALT
Acting Comptroller of the Currency

MP HMV [13]

PLAINTIFF'S EXHIBIT B

TREASURY DEPARTMENT

Internal Revenue Service

Office of Deputy Collector
District: Washington

Spokane, Washington
1/25/37

1/25/37
Earl E. Reed
Claim for Refund
Filed
11/26/40
[Stamp] E. E. REED
Dep. Coll.

Spokane and Eastern
Branch First National Bank of Seattle
Spokane, Washington.

Sirs:

Find affixed and canceled hereto documentary stamps in the amount of Five Hundred Dollars ($500.00) found due as the result of my recent examination of your records.

Tax liability was occasioned by the merger of the Spokane Eastern Trust Company and the First National Bank of Seattle on 12/28/35. As a result of such merger the assets of the Spokane Eastern Trust Company through the plan of merger became the property of the continuing corporation the First National Bank of Seattle. Included in the many assets was certain realty consisting of the

Bank building and the land there under the property of the Spokane Eastern Trust Company. The value of this property for the purpose of the merger was $500,000.00, this being the figure used establishes the value for tax purposes as being the actual consideration accordingly a tax liability of $500.00 was created.

Stamps in the amount of $500.00 have been affixed and canceled to this letter by me covering such liability in view of the fact that no warranty deed was issued.

This letter with stamps affixed should be made a part of your records for your protection and for reference in the future if necessary.

Respectfully
EARL E. REED
Deputy Collector
EARL E. REED
Dep. Coll. [14]

PLAINTIFF'S EXHIBIT "C"

TREASURY DEPARTMENT

Internal Revenue Service

Office of Deputy Collector
District:
Washington
Spokane, Washington
1/25/37

1/25/37
E. E. R.
D. C.
Claim for refund filed
11/26/40
[4 stamps] E. E. REED
Dep. Coll.

Spokane and Eastern
Branch—First National Bank of Seattle
Spokane, Washington

Sirs:

Find affixed and canceled hereto documentary stamps in the amount of $457.60.

The tax liability was created as the result of the merger, 12/28/35 between the Spokane Eastern Trust Company and the First National Bank of Seattle whereby certain taxable securities were taken over by the continuing bank. These securities were formerly part of the assets of the Spokane Eastern Trust Company.

This letter with stamps affixed should be retained

as a part of your records for your protection and for future reference if necessary.

Respectfully,

EARL E. REED
Deputy Collector

1/25/37
E. E. Reed
D. C.
Claim for refund filed
11/26/40
[7 stamps] EARL E. REED
D. C. [15]

Taxable Bonds *Effected* by the merger 12/28/35 between the Spokane Eastern Trust Company and the First National Bank of Seattle.

25000	Southern Pacific Co.	$ 10.00
20000	Anaconda Copper Mining Co.	8.00
15000	Armour and Co. of Delaware	6.00
25000	Baltimore and Ohio Ry.	10.00
10000	Bethlehem Steel Corpn.	4.00
5500	Catholic Bishop of Spokane	2.20
10500	Cathedral of St. John The Evang.	4.20
2500	Columbia River Longview Bridge	1.00
11500	Columbia Valley Inv. Co.	4.60
10000	Consumers Power Company	4.00
77500	Davenport Hotel	30.00
10000	Edison Elec. Illuminating Co.	4.00
500	Eugene Lumber Co.	.20
20000	Fox West Coast Theatres	8.00
50000	Great Northern Ry.	20.00
11000	Idaho Memorial Bldg. Assn.	4.40
12000	Idaho Memorial Bldg. Assn.	4.80
12000	Idaho Memorial Bldg. Assn.	4.80
20000	Kresge Foundation Notes	8.00

30000	Los Angeles Gas & Electric Corpn	12.00
8500	Montana Catholic Missions	3.40
25000	New York Central Ry	10.00
8500	Northwest Cities Gas Co	3.40
10000	Ohio Edison Company	4.00
25000	Olympic Forest Products Inc	10.00
25000	Olympic Forest Products Inc	10.00
25000	Olympic Forest Products Inc	10.00
25000	Olympic Forest Products Inc	10.00
11000	Oregon Washington Water Service	4.40
5000	Pacific Gas & Electric Corp	2.00
40000	Pacific Lighting Corporation	16.00
50000	Penn. Ry. Equipment Trust	20.00
50000	Portland General Electric Co	20.00
27000	Puget Sound Power & Light	10.80
42000	Puget Sound Power & Light	16.80
46000	Puget Sound Power & Light	18.40
5000	Pure Oil Company	2.00
32000	Republic Steel Corporation	12.80
13000	Sisters of Charity House of Pro	5.20
50000	Southern Ry. Co	20.00
22000	Southern Edison	8.80
27000	Southern Edison	10.80
20000	Southern Edison	8.00
1500	Spokane Civic Building Co	.60
30000	Southern Bell Tell. Co	12.00
25000	Union Oil Co. of Cal	10.00
40000	Vanadium Corporation of America	16.00
80000	Washington Water Power	32.00
		$457.60

[16]

PLAINTIFF'S EXHIBIT "D"

Tuesday, November 26, 1935

Pursuant to a call by the president a special meeting of the board of directors of Spokane and Eastern Trust Company of Spokane, Washington,

Plaintiff's Exhibit "D" (Continued)

was held in its banking house in the Spokane and Eastern Building in the City of Spokane, County of Spokane, State of Washington, on Tuesday, November 26, 1935, at the hour of 3:15 o'clock p. m., for the purpose of considering and acting upon the proposition of the consolfdation of said Bank with First National Bank of Seattle, a national banking association located in Seattle, King County, State of Washington, for the purpose of authorizing the execution of certain documents in connection with such consolidation, and also for the purpose of considering the proposition of the payment and retirement of all of the $750,000 in principal amount of the outstanding debentures of Spokane and Eastern Trust Company, and also for the purpose of considering the continuation and establishment of branches by the consolidated bank.

Mr. Joel E. Ferris, the president of the Bank, acted as chairman, and Mr. J. L. Campbell, secretary, acted as secretary.

The following directors were present:

JOEL E. FERRIS,
JOHN W. GRAHAM,
W. G. GRAVES,
R. INSINGER,
CONNER MALOTT,
W. S. McCREA,
W. H. MURGITTROYD,
R. L. RUTTER,
F. G. SPROWL,

Plaintiff's Exhibit "D" (Continued)

The following directors were absent:

ERIC A. JOHNSTON
W. T. TRIPLETT

(2)

The chairman presented and caused to be read to the meeting an Agreement of Consolidation providing for the consolidation of First National Bank of Seattle and Spokane and Eastern Trust Company of Spokane under the charter of First National Bank of Seattle, which agreement was in form approved by the Comptroller of the Currency. A duplicate original of said agreement was ordered identified and filed as a part of the records of the meeting, a copy thereof is in words and figures as follows:

"AGREEMENT OF CONSOLIDATION
between
FIRST NATIONAL BANK OF SEATTLE
and
SPOKANE AND EASTERN TRUST COMPANY
Under the Charter of
FIRST NATIONAL BANK OF SEATTLE
Under the Title of
SEATTLE-FIRST NATIONAL BANK

"This Agreement Made between First National Bank of Seattle, a banking association organized under the laws of the United States, located in the

Plaintiff's Exhibit "D" (Continued)

City of Seattle, County of King and State of Washington, with capital of $8,000,000, divided into 400,000 shares of common stock having par value of $20.00 each, and Spokane and Eastern Trust Company, a banking corporation (hereinafter referred to as an "association") organized under the laws of the State of Washington, located in the City of Spokane, County of Spokane [17] and State of Washington, with capital of $1,000,000 divided into 10,000 shares of common stock having par value of $100.00 each, and each acting pursuant to a resolution of its Board of Directors and by a majority of said Board, pursuant to the authority given by, and in accordance with the provisions of an Act of the Congress of the United States entitled "An Act to provide for the consolidation of National Banking Associations", approved November 7, 1918, as amended, Witnesseth as follows:

Section 1.

"First National Bank of Seattle and Spokane and Eastern Trust Company are hereby consolidated under the charter of First National Bank of Seattle, as hereby modified, and the Articles of Association of said First National Bank of Seattle are hereby amended to conform with this agreement.

Section 2.

"The name of the consolidated association shall be "Seattle-First National Bank", and the first article of the Articles of Association of First Na-

Plaintiff's Exhibit "D" (Continued)

tional Bank of Seattle is hereby amended to provide for the change in title.

"The place where its main banking house shall be located and its operations of discount and deposit carried on, and its general business conducted, shall be at Nos. 700 to 722 Second Avenue, in the City of Seattle, County of King and State of Washington, with two branches in said City of Seattle located at No. 1328 Fourth Avenue and No. 408 Pike Street (Fourth & Pike Streets), such branches being now branches of First National Bank of Seattle and which were in lawful operation on February 25, 1927; and with such additional branches as may hereafter be operated according to law.

"The Board of Directors of the consolidated association shall have the power from time to time to change the location of the main office to any other place within the limits of the City of Seattle without action by the shareholders or approval by the Comptroller of the Currency, and may change the location of either of the branches provided for in this agreement as well as any branch which may hereafter be established to any other place within the limits of the municipality in which said branch is located, with the approval of the Comptroller of the Currency, as provided by law, and without action by the shareholders.

Section 3.

"The capital of the consolidated association shall be $8,000,000 divided into 400,000 shares of com-

Plaintiff's Exhibit "D" (Continued)

mon stock having par value of $20.00 each, subject to the right to change the amount of said capital hereafter in such manner as is now or shall in future be authorized by law.

"On the date of consolidation, the consolidated association shall have a surplus of $1,620,000 and undivided profits of not less than $2,380,000. Said capital, surplus and undivided profits at the date of consolidation shall then aggregate not less than $12,000,000.

Section 4.

"The assets contributed by each of said associations shall be passed upon and be acceptable to a committee of six, three to be appointed by the Board of Directors of each association. [18]

"As its contribution to the capital, surplus and undivided profits of the consolidated association, First National Bank of Seattle shall furnish net assets exceeding all liabilities of that association, except to its shareholders as such, by an amount not less than $10,400,000; and as its contribution to the capital, surplus and undivided profits of the consolidated association, Spokane and Eastern Trust Company shall furnish net assets exceeding all liabilities of that association, except to its shareholders as such, by an amount not less than $1,600,000.

"All of such assets shall be valued upon the following bases:

a. Cash shall be valued at par.

b. United States Government, State, Municipal, and other bonds and securities and corpo-

Plaintiff's Exhibit "D" (Continued)

rate stocks shall be valued at not to exceed current market values, with adjustment of interest, where such current market values may be readily ascertained from a recognized exchange.

c. Bonds, securities and corporate stocks, the current market values of which are not ascertainable from a recognized exchange, bills receivable, consisting of promissory notes, trade acceptances, bills of exchange, and other instruments of like or similar character, real estate, furniture, fixtures, and all other assets not mentioned above, shall be valued at an amount approved by the aforesaid committee of six, provided, however, that the said committee of six shall not place upon any asset a value in excess of the value placed thereon in the last preceding report of examination of the consolidating association made by a national bank examiner.

Section 5

"All assets of each association at the date of consolidation shall pass to and vest in the consolidated association, and the consolidated association shall be responsible for all of the liabilities of every kind and description of each of the consolidating associations.

"No dividend shall be paid by either of the consolidating associations on its stock subsequent to the execution of this "Agreement of Consolidation" by the respective Boards of Directors of the consolidating associations.

Plaintiff's Exhibit "D" (Continued)

Section 6

"Of the capital of the consolidated association, 350,000 shares shall be allotted to the present shareholders of First National Bank of Seattle, being 7/8 share of $20.00 par value for each share of $20.00 par value now held by them, and 50,000 shares shall be allotted to the present shareholders of Spokane and Eastern Trust Company, being five shares each of $20.00 par value for each share of $100.00 par value now held by them, provided, however, that the shareholders of Spokane and Eastern Trust Company, who do not desire to accept five shares of stock in the consolidated association in exchange for each share of stock they now own in Spokane and Eastern Trust Company, shall have the option of taking cash at the rate of $160.00 for each share of stock of Spokane and Eastern Trust Company held by them. The stock in the consolidated association not taken by shareholders of Spokane and Eastern Trust Company, who elect to take cash, shall inure pro rata to the shareholders of the consolidated association. [19]

Section 7

"The Board of Directors of the consolidated association shall consist of not less than five nor more than twenty-five shareholders, as presently provided in the third Article of the Articles of Association of First National Bank of Seattle.

"The following named directors shall constitute the Board of Directors of the consolidated associa-

Plaintiff's Exhibit "D" (Continued)

tion until the next annual election and until their successors have been elected and qualified:

L. M. Arnold	L. C. Henry
M. A. Arnold	Chas. H. Ingram
J. H. Ballinger	T. Jerome
Wilfred H. Bordeaux	Richard E. Lang
F. H. Brownell	J. T. McVay
W. C. Butler	W. H. Parsons
Chas. F. Clise	Wm. Pigott, Jr.
E. B. Deming	Wm. G. Reed
R. H. Denny	Alfred Shemanski
A. S. Elford	E. A. Stuart
O. D. Fisher	J. A. Swalwell
P. E. Harris	Katheryn Wilson
J. T. Heffernan	

Section 8

"The provisions of this Agreement of Consolidation shall be subject to such amendment as may be made by the Boards of Directors of the consolidating associations and ratified and confirmed by the shareholders of the respective associations at the meetings to be held for the purpose of voting on the question of consolidating the two associations.

Section 9

"This consolidation shall become effective when it shall have been ratified and confirmed by the affirmative vote of the holders of at least two-thirds of the shares of stock, at the time outstanding, of said First National Bank of Seattle and of said Spokane and Eastern Trust Company, respectively,

Plaintiff's Exhibit "D" (Continued)

at respective meetings to be held pursuant to calls by the respective Boards of Directors thereof, and the Comptroller of the Curreney of the United States shall have issued his formal certificate under the seal of his office approving such consolidation.

"Witness the signatures and seals of said associations, this 26th day of November, 1935, each hereunto set by the President and attested by the Cashier, pursuant to a resolution of the Board of Directors, acting by a majority thereof, and witness the signatures hereto of a majority of each of said Boards of Directors.

FIRST NATIONAL BANK OF SEATTLE.

By M. A. ARNOLD,
President.

Attest:

H. MacDONALD,
Cashier.

[Signed]

M. A. Arnold
L. M. Arnold
Wilfred Bordeaux
Wm. C. Butler
Chas. F. Clise
E. B. Deming
R. H. Denny
A. S. Elford
L. C. Henry
Chas. H. Ingrain
T. Jerome
Richard E. Lang
W. H. Parsons
Wm. Pigott, Jr.
Alfred Shemanski
J. A. Swalwell
Katheryn Wilson

[Seal of Bank]

Directors of First National Bank of Seattle. [20]

Plaintiff's Exhibit "D" (Continued)

SPOKANE AND EASTERN TRUST COMPANY

By JOEL E. FERRIS,
President.

Attest:

[Signed] J. L. CAMPBELL,
Secretary.

[Signed]

Joel E. Ferris	W. S. McCrea
Conner Malott	John W. Graham
Will H. Murgittroyd	R. Insinger
F. G. Sprowl	W. G. Graves

[Seal of Bank]

Directors of Spokane and Eastern Trust Company.

"State of Washington,
County of King—ss.

On this 26th day of November, 1935, before me, a Notary Public for the State and County aforesaid, personally came M. A. Arnold as President, and H. C. MacDonald, as Cashier of First National Bank of Seattle, and each in his said capacity acknowledged the foregoing instrument to be the act and deed of said association and the seal affixed thereto to be its seal; and came also M. A. Arnold, L. M. Arnold, Wilfred Bordeaux, Wm. C. Butler, Chas. F. Clise, E. B. Deming, R. H. Denny, A. S. Elford, L. C. Henry, Chas. H. Ingram, T. Jerome,

Plaintiff's Exhibit "D" (Continued)

Richard E. Lang, W. H. Parsons, Wm. Pigott, Jr., Alfred Shemanski, J. A. Swalwell and Katheryn Wilson, being a majority of the Board of Directors of said association, and each of them acknowledged said instrument to be the act and deed of said association and of himself as a director thereof.

Witness my official seal and signature this day and year aforesaid.

[Signed] C. K. POE,
Notary Public in and for King County, Washington, residing at Seattle.

My commission expires May 3, 1936.

"State of Washington,
County of Spokane—ss.

On this 26th day of November, 1935, before me, a Notary Public for the State and County aforesaid, personally came Joel E. Ferris as President, and J. L. Campbell as Secretary of Spokane and Eastern Trust Company, and each in his said capacity acknowledged the foregoing instrument to be the act and deed of said corporation and the seal affixed thereto to be its seal; and came also Joel E. Ferris, Conner Malott, Will H. Murgittroyd, F. G. Sprowl, W. S. McCrea, John W. Graham, R. Insinger, and W. G. Graves, being a majority of the Board of Directors of said corporation, and each of them acknowledged said instru-

Plaintiff's Exhibit "D". (Continued)

ment to be the act and deed of said corporation and of himself as a director thereof.

Witness my official seal and signature this day and year aforesaid.

[Signed] W. I. HARVEY,
Notary Public in and for Spokane County, Washington, residing at Spokane.

My commission expires Jan. 17, 1939."

[Notarial Seal] [21]

After considering and discussing the proposed consolidation, upon motion duly made and seconded the following resolution was adopted by the affirmative vote of all the directors present:

Whereas, there has been presented and read to this meeting an Agreement of Consolidation between First National Bank of Seattle and Spokane and Eastern Trust Company of Spokane, Washington, which agreement is in form approved by the Comptroller of the Currency; and

Whereas, it is deemed for the best interests of this Bank that said agreement be entered into,

Now, Therefore, Be It Resolved by the board of directors of Spokane and Eastern Trust Company of Spokane, Washington, that this Bank enter into such agreement and that the president or any vice president and the secretary or any assistant secretary of this Bank be, and they hereby are, authorized and directed to execute such agreement in the

Plaintiff's Exhibit "D" (Continued)

name of this Bank and under its corporate seal, and that such agreement be executed by not less than a majority of the members of the board of directors of this Bank; and

Be It Further Resolved that a special meeting of the stockholders of this Bank be and the same hereby is called to be held at the banking house of this Bank at Spokane, Washington, on the 24th day of December, 1935, at 3:00 o'clock p. m., for the purpose of considering and acting upon the matter of the ratification and confirmation of said Agreement of Consolidation as presented to this meeting or as hereafter amended with the approval of this board and executed as provided by law, and that the officers of this Bank be and they hereby are authorized and directed to give proper notice of said meeting by publication and by registered mail as provided by law, and further authorized and directed to procure from the stockholders of this Bank a written waiver of published notice of said meeting if such waivers be obtainable.

Upon motion duly made and seconded the following resolution was adopted by the affirmative vote of all of the directors;

Whereas, this Bank and the First National Bank of Seattle have each established pursuant to law certain branches; and

Whereas, the board of directors of First National Bank of Seattle have authorized the making of an application to the Comptroller of the Currency for authority for the consolidated bank to establish

Plaintiff's Exhibit "D" (Continued)

and/or continue branches of the consolidated bank,

Now, Therefore, Be It Resolved by the board of directors of Spokane and Eastern Trust Company that the action of the board of directors of First National Bank of Seattle in authorizing and making of an application to the Comptroller of the Currency for authority for the consolidated bank to establish and/or continue branches of the consolidated bank be and the same hereby is approved, ratified and confirmed.

It was further duly moved, seconded and unanimously resolved that:

Whereas, the said Agreement of Consolidation provides for the contribution by each of the consolidating banks of certain assets and for the appointment of a committee to certify to the acceptability of the said assets to the Comptroller of the Currency,

Now, Therefore Be It Resolved by the Board of Directors of Spokane and Eastern Trust Company that Joel E. Ferris, Conner Malott, and W. T. Triplett be and they hereby are appointed to the committee referred to in Section 4 of said Agreement of Consolidation and to certify in such form as may be deemed desirable or be required by the Comptroller of the Currency the acceptability of the assets to be contributed by each of the consolidating banks. [22]

It was further moved, seconded and unanimously resolved that:

Be It Resolved that the officers of this Bank be

Plaintiff's Exhibit "D" (Continued)

and they hereby are authorized and directed to pay to Federal Reserve Bank of Minneapolis, as custodian and fiscal agent for Reconstruction Finance Corporation, on or before the effective date of the consolidation of this bank with First National Bank of Seattle, in payment in full of said debentures, the sum of $750,000, together with the interest accrued thereon to the date of receipt of such payment by said Federal Reserve Bank of Minneapolis, and to procure the consent of the Supervisor of Banking of the State of Washington and of Reconstruction Finance Corporation to such payment and retirement of debentures.

There being no further business to come before the Board the meeting was adjourned on the call of the president.

[Signed] JOEL E. FERRIS,
President.

[Signed] J. L. CAMPBELL,
Secretary. [23]

PLAINTIFF'S EXHIBIT No. "E"

Tuesday, December 24, 1935

Special meeting of stockholders of Spokane and Eastern Trust Company held in its Directors' Room, Spokane, Washington, at 3:00 P. M. The following stockholders, representing 110 shares, were present in person:

R. L. Rutter	10 shares
Joel E. Ferris	10 shares

Plaintiff's Exhibit No. "E"—Continued

William G. Graves	10 shares
R. Insinger	10 shares
Eric A. Johnston	10 shares
Conner Malott	10 shares
W. S. McCrea	10 shares
W. H. Murgittroyd	10 shares
Dr. F. G. Sprowl	10 shares
W. T. Triplett	10 shares
John W. Graham	10 shares
	110 shares

1. Meeting called to order by Joel E. Ferris, President.

2. J. L. Campbell, Secretary, exhibited affidavit of publication of notice of special meeting of the stockholders, which notice appeared in The Spokane Press, a daily newspaper of general circulation published in the City of Spokane, County of Spokane, State of Washington, which notice appeared in each issue of said paper for a period of twenty-eight days beginning the 26th of November, 1935. Copy of notice published and mailed is as follows:

"Spokane and Eastern Trust Company
Spokane, Washington
Stockholders' Meeting

"Notice is hereby given that pursuant to call of its directors a special meeting of the stockholders of Spokane and Eastern Trust Company, Spokane, Washington, will be held at its

Plaintiff's Exhibit No. "E"—Continued

banking house at 601 Riverside Avenue in the City of Spokane, State of Washington, on December 24, 1935, at 3:00 o'clock P. M., for the purpose of considering and determining by vote whether an agreement (in the form now on file at the bank, subject to such amendments thereto, if any, as may be made prior to the vote thereon by the stockholders) to consolidate the said bank and First National Bank of Seattle, located in the City of Seattle, State of Washington, under the provisions of the laws of the United States, shall be ratified and confirmed, and for the purpose of voting upon any other matters incidental to the proposed consolidation of the two banks. A copy of the aforesaid agreement executed by a majority of the directors of each of the two banks, providing for the consolidation, is on file at the bank and may be inspected during business hours.

J. L. CAMPBELL,
Secretary.

November 26, 1935.

The Secretary further reported that all of the shareholders had signed a waiver of notice of the meeting, a copy of which waiver is as follows:

"Waiver of Notice of Special Meeting of Stockholders of
SPOKANE AND EASTERN TRUST COMPANY

"The undersigned, being the holders of all

Plaintiff's Exhibit No. "E"—Continued

the outstanding capital stock of Spokane and Eastern Trust Company, a Washington banking corporation of Spokane, Washington, do hereby waive publication in a newspaper of general circulation in Spokane, publication in [24] the legal newspaper for the publication of legal notices and advertisements in the County of Spokane, State of Washington, and publication in any other newspaper, and mailing three weeks prior to the date of said meeting of notice of a special meeting of the stockholders of said bank called by the Board of Directors thereof to be held at the banking house of said bank in Spokane, Washington, on December 24th, 1935, at 3:00 o'clock P. M., for the purpose of considering and determining by vote whether an agreement to consolidate said bank with First National Bank of Seattle, a national banking association of Seattle, Washington, under the provisions of the laws of the United States shall be ratified and confirmed, and for the purpose of voting upon any changes in or amendments to said agreement, and voting upon any other matters incidental to or connected with the proposed consolidation, and consent that such meeting be held at the time and place above stated upon written notice thereof mailed to each stockholder of record by registered mail not less than ten (10) days prior to such meeting.

Plaintiff's Exhibit No. "E"—Continued
Dated December 24, 1935.

NORTHWEST BANCORPORATION,
By J. C. THOMSON,
Its President.
W. G. GRAVES,
F. G. SPROWL,
JOEL E. FERRIS,
W. T. TRIPLETT,
CONNER MALOTT,
JOHN W. GRAHAM,
W. S. McCREA,
WILL H. MURGITTROYD,
R. L. RUTTER,
R. INSINGER,
ERIC A. JOHNSTON."

3. J. L. Campbell and Conner Malott, Committee on Proxies, made the following report:

Stock represented by proxy	9890	shares
Stock represented in person	110	"
Stock not represented	0	"
	10000	"

4. The above report was accepted.

5. A majority of the stock being represented either in person or by proxy, the meeting was declared convened in due form.

6. The following resolution was adopted by the unanimous vote of all of the shares of said bank:

"Whereas, the Board of Directors of First National Bank of Seattle, a banking association organized under the laws of the United

Plaintiff's Exhibit No. "E"—Continued

States, located in the City of Seattle, County of King and State of Washington, has entered into an agreement with the Board of Directors of Spokane and Eastern Trust Company, a banking corporation organized under the laws of the State of Washington, located in the City of Spokane, County of Spokane and State of Washington, providing for the consolidation of the two banks into one national banking association under the charter of First National Bank of Seattle, and under the title of "Seattle-First National Bank", in accordance with the provisions of the Act of Congress approved November 7, 1918, as amended, said agreement entered into between the two Boards of Directors reading as follows: [25]

AGREEMENT OF CONSOLIDATION
between
FIRST NATIONAL BANK OF SEATTLE
and
SPOKANE AND EASTERN TRUST COMPANY
Under the Charter of
FIRST NATIONAL BANK OF SEATTLE
Under the Title of
"SEATTLE-FIRST NATIONAL BANK"

The Agreement made between First National Bank of Seattle, a banking association organized under the laws of the United States, located in the City of Seattle, County of King and State of Washington, with capital of $8,000,000, divided into

Plaintiff's Exhibit No. "E"—Continued

400,000 shares of common stock having par value of $20.00 each, and Spokane and Eastern Trust Company, a banking corporation (hereinafter referred to as an "association") organized under the laws of the State of Washington, located in the City of Spokane, County of Spokane and State of Washington, with capital of $1,000,000, divided into 10,000 shares of common stock having par value of $100.00 each, and each acting pursuant to a resolution of its Board of Directors and by a majority of said Board, pursuant to the authority given by, and in accordance with the provisions of an Act of the Congress of the United States entitled "An Act to provide for the consolidation of National Banking Associations", approved November 7, 1918, as amended, Witnesseth as follows:

Section 1

First National Bank of Seattle and Spokane and Eastern Trust Company are hereby consolidated under the charter of First National Bank of Seattle, as hereby modified, and the Articles of Association of said First National Bank of Seattle are hereby amended to conform with this agreement.

Section 2

The name of the consolidated association shall be "Seattle-First National Bank", and the first article of the Articles of Association of First National Bank of Seattle is hereby amended to provide for the change in title.

Plaintiff's Exhibit No. "E"—Continued

The place where its main banking house shall be located and its operations of discount and deposit carried on, and its general business conducted, shall be at Nos. 700 to 722 Second Avenue, in the City of Seattle, County of King and State of Washington, with two branches in said City of Seattle located at No. 1328 Fourth Avenue and No. 408 Pike Street (Fourth & Pike Streets), such branches being now branches of First National Bank of Seattle and which were in lawful operation on February 25, 1927; and with such additional branches as may hereafter be operated according to law.

The Board of Directors of the consolidated association shall have the power from time to time to change the location of the main office to any other place within the limits of the City of Seattle without action by the shareholders or approval by the Comptroller of the Currency, and may change the location of either of the branches provided for in this agreement as well as any branch which may hereafter be established to any other place within the limits of the municipality in which said branch is located, with the approval of the Comptroller of the Currency, as provided by law, and without action by the shareholders.

Section 3

The capital of the consolidated association shall be $8,000,000, divided into 400,000 shares of common stock having par value of $20.00 each, subject to the right to change the amount of said capital

Plaintiff's Exhibit No. "E"—Continued

hereafter in [26] such manner as is now or shall in future be authorized by law.

On the date of consolidation, the consolidated association shall have a surplus of $1,620,000 and undivided profits of not less than $2,380,000. Said capital, surplus and undivided profits at the date of consolidation shall then aggregate not less than $12,000,000.

Section 4

The assets contributed by each of said associations shall be passed upon and be acceptable to a committee of six, three to be appointed by the Board of Directors of each association.

As its contribution to the capital, surplus and undivided profits of the consolidated association, First National Bank of Seattle shall furnish net assets exceeding all liabilities of that association, except to its shareholders as such, by an amount not less than $10,400,000; and as its contribution to the capital, surplus and undivided profits of the consolidated association, Spokane and Eastern Trust Company shall furnish net assets exceeding all liabilities of that association, except to its shareholders as such, by an amount not less than $1,600,000.

All of such assets shall be valued upon the following bases:

a. Cash shall be valued at par.

b. United States Government, State, Municipal, and other bonds and securities and cor-

Plaintiff's Exhibit No. "E"—Continued

porate stocks shall be valued at not to exceed current market values, with adjustment of interest, where such current market values may be readily ascertained from a recognized exchange.

c. Bonds, securities and corporate stocks, the current market values of which are not ascertainable from a recognized exchange, bills receivable, consisting of promissory notes, trade acceptances, bills of exchange, and other instruments of like or similar character, real estate, furniture, fixtures, and all other assets not mentioned above, shall be valued at an amount approved by the aforesaid committee of six, provided, however, that the said committee of six shall not place upon any asset a value in excess of the value placed thereon in the last preceding report of examination of the consolidating association made by a national bank examiner.

Section 5

All assets of each association at the date of consolidation shall pass to and vest in the consolidated association, and the consolidated association shall be responsible for all of the liabilities of e ry kind and description of each of the consolidating associations.

No dividend shall be paid by either of the consolidating associations on its stock subsequent to the execution of this "Agreement of Consolidation"

Plaintiff's Exhibit No. "E"—Continued

by the respective Boards of Directors of the consolidating associations. [27]

Section 6

Of the capital of the consolidating associations, 350,000 shares shall be allotted to the present shareholders of First National Bank of Seattle, being 7/8 share of $20.00 par value for each share of $20.00 par value now being held by them, and 50,000 shares shall be allotted to the present shareholders of Spokane and Eastern Trust Company, being five shares each of $20.00 par value for each share of $100.00 par value now held by them, provided, however, that the shareholders of Spokane and Eastern Trust Company, who do not desire to accept five shares of stock in the consolidated association in exchange for each share of stock they now own in Spokane and Eastern Trust Company, shall have the option of taking cash at the rate of $160.00 for each share of stock of Spokane and Eastern Trust Company held by them. The stock in the consolidated association not taken by shareholders of Spokane and Eastern Trust Company, who elect to take cash, shall inure pro rata to the shareholders of the consolidated association.

Section 7

The Board of Directors of the consolidated association shall consist of not less than five nor more than twenty-five shareholders, as presently provided in the third Article of the Articles of Association of First National Bank of Seattle.

Plaintiff's Exhibit No. "E"—Continued

The following named directors shall constitute the Board of Directors of the consolidated association until the next annual election and until their successors have been elected and qualified:

L. M. Arnold
M. A. Arnold
J. H. Ballinger
Wilfred H. Bordeaux
F. H. Brownell
W. C. Butler
Chas. F. Clise
E. B. Deming
R. H. Denny
A. S. Elford
O. D. Fisher
P. E. Harris
J. T. Heffernan
L. C. Henry
Chas. H. Ingram
T. Jerome
Richard E. Lang
J. T. McVay
W. H. Parsons
Wm. Pigott, Jr.
Wm. G. Reed
Alfred Shemanski
E. A. Stuart
J. A. Swalwell
Katheryn Wilson

Section 8

The provisions of this Agreement of Consolidation shall be subject to such amendment as may be made by the Boards of Directors of the consolidating associations and ratified and confirmed by the shareholders of the respective associations at the meetings to be held for the purpose of voting on the question of consolidating the two associations.

Section 9

This consolidation shall become effective when it shall have been ratified and confirmed by the affirmative vote of the holders of at least two-thirds of the shares of stock, at the time outstanding, of said First National Bank of Seattle and of said Spokane and Eastern Trust Company, respectively, at respective meetings to be held pursuant to calls by

Plaintiff's Exhibit No. "E"—Continued

the respective Boards of Directors thereof, and the Comptroller of the Currency of the United States shall have issued his formal certificate under the seal of his office approving such consolidation. [28]

Witness the signatures and seals of said associations, this 26th day of November, 1935, each hereunto set by the President and attested by the Cashier, pursuant to a resolution of the Board of Directors, acting by a majority thereof, and witness the signatures hereto of a majority of each of said Boards of Directors.

FIRST NATIONAL BANK OF SEATTLE

By M. A. ARNOLD,
President.

Attest:

H. C. MacDONALD,
Cashier.

M. A. Arnold
L. M. Arnold
Wilfred Bordeaux
Wm. C. Butler
Chas. F. Clise
E. B. Deming
R. H. Denny
A. S. Elford
L. C. Henry
Wm. Pigott, Jr.
Alfred Shemanski
J. A. Swalwell
Katheryn Wilson
Chas. H. Ingram
T. Jerome
Richard E. Lang
W. H. Parsons

[Seal of Bank]

Directors of First National Bank of Seattle.

SPOKANE AND EASTERN TRUST COMPANY

By JOEL E. FERRIS,
President.

Plaintiff's Exhibit No. "E"—Continued

Attest:

J. L. CAMPBELL,
Secretary.

Joel Ferris	W. S. McCrea
Conner Malott	John W. Graham
Will H. Murgittroyd	R. Insinger
F. G. Sprowl	W. G. Graves

[Seal of Bank]

Directors of Spokane and Eastern Trust Company.

State of Washington,
County of King—ss.

On this 26th day of November, 1935, before me, a Notary Public for the State and County aforesaid, personally came M. A. Arnold as President, and H. C. MacDonald, as Cashier of First National Bank of Seattle, and each in his said capacity acknowledged the foregoing instrument to be the act and deed of said association and the seal affixed thereto to be its seal; and came also M. A. Arnold, L. M. Arnold, Wilfred Bordeaux, Wm. C. Butler, Chas. F. Clise, E. B. Deming, R. H. Denny, A. S. Elfored, L. C. Henry, Chas. H. Ingram, T. Jerome, Richard E. Lang, W. H. Parsons, Wm. Pigott, Jr., Alfred Shemanski, J. A. Swalwell and Katheryn Wilson, being a majority of the Board of Directors of said association, and each of them acknowledged said instrument to be the act and deed of said association and of himself as a director [29] thereof.

Plaintiff's Exhibit No. "E"—Continued

Witness my official seal and signature this day and year aforesaid.

[Seal of Notary] C. K. POE,
Notary Public in and for King County, Washington, residing at Seattle.

My commission expires May 3, 1936.

State of Washington,
County of Spokane—ss.

On this 26th day of November, 1935, before me, a Notary Public for the State and County aforesaid, personally came Joel E. Ferris as President, and J. L. Campbell as Secretary of Spokane and Eastern Trust Company, and each in his said capacity acknowledged the foregoing instrument to be the act and deed of said corporation and the seal affixed thereto to be its seal; and came also Joel E. Ferris, Conner Malott, Will H. Murgittroyd, F. G. Sprowl, W. S. McCrea, John W. Graham, R. Insinger, and W. G. Graves, being a majority of the Board of Directors of said Corporation, and each of them acknowledged said instrument to be the act and deed of said corporation and of himself as a director thereof.

Witness my official seal and signature this day and year aforesaid.

[Seal of Notary] W. I. HARVEY,
Notary Public in and for Spokane County, Washington, residing at Spokane.

My commission expires Jan. 17, 1939.

Plaintiff's Exhibit No. "E"—Continued

Therefore, Be It Resolved, That the agreement entered into between the Board of Directors of First National Bank of Seattle and the Board of Directors of Spokane and Eastern Trust Company be ratified and confirmed and that these banks be consolidated under the charter of First National Bank of Seattle and under the title of "Seattle-First National Bank", with capital stock of Eight Million Dollars ($8,000,000), such consolidation to become effective immediately upon its approval by the Comptroller of the Currency.

7. There being no further business to come before the meeting, upon motion it adjourned subject to call by the president.

JOEL E. FERRIS,
President.
J. L. CAMPBELL,
Secretary. [30]

September 1941 Term 128th day

Wednesday, April 1, 1942

Court Convened Pursuant to Adjournment, at 10:00 A. M.

Present: Honorable Lewis B. Schwellenbach, District Judge, A. A. LaFramboise, Clerk, Harvey Erickson, Assistant U. S. Attorney, R. R. Isaacs and Elwyn L. Daniel, Deputy U. S. Marshals.

[Title of Cause.]

PROCEEDINGS

RECORD OF TRIAL

Now on this 1st day of April, 1942, this case was regularly called for trial, both parties being ready, at which time the Court signed the pre-trial order.

The following witnesses were then sworn and testified on behalf of the plaintiff:

1. J. L. Campbell
2. Geo. H. Westerman
3. C. A. Nicholson

The following exhibits were received in evidence.

Plaintiff's Exhibit A Approval of Consolidation by Comptroller.

Plaintiff's Exhibit B Letter 1/25/37 re $500.00 tax on real estate transfer.

Plaintiff's Exhibit C Letter 1/25/37 re $457.60 tax on bond transfer.

Plaintiff's Exhibit D Minutes Board of Directors Spokane & Eastern 11/26/35.

Plaintiff's Exhibit E Minutes of Stockholders, Spokane & Eastern 12/24/35.

Plaintiff rested at 10:45 A. M.

Defendant offered no testimony. Arguments were then presented to the Court and the matter taken under advisement. Plaintiff's brief to be filed April 2, 1942, Defendant's brief to be filed April 8, 1942, and Plaintiff's reply brief to be filed April 10, 1942.

* * * * * * *

Thereupon Court adjourned until April 2, 1942, at 10:00 A. M. [31]

[Title of District Court and Cause.]

OPINION OF THE COURT

The plaintiff national banking association grew out of a consolidation in 1935 between the Spokane and Eastern Trust Company, a state bank and trust company of Spokane, and the First National Bank of Seattle, a national banking association. In this consolidation, the two institutions availed themselves of the provisions of Section 331, Chap. 614 of the Act of August 23, 1935, Title 12 U. S. C. A., Sec. 34 (a). Pursuant to that act, the necessary preliminary steps looking towards consolidation were taken by the directors and stockholders of the two banks. The consolidation was finally effectuated December 28, 1935, by the issuance of a certificate of consolidation by the Acting Comptroller of the Currency. Prior to the consolidation, the Spokane and Eastern Trust Company owned and held in its security account certain bonds and other securities. It had legal title to certain bonds and stocks which it held in trust. It owned the real estate which included its banking premises. As a consequence of the consolidation, without the issuance of any deed or other instrument of [32] conveyance as to the real estate and without the execution of any instrument of transfer as to the stocks and bonds and other securities, the title to all of such property became vested in the plaintiff. Defendant assessed transfer taxes against the plaintiff and required the purchase and cancellation of

revenue stamps therefor. Plaintiff protested such assessment and brings this action for the money paid thereon.

The pertinent portions of the statute under which the consolidation occurred are:

> "Any bank incorporated under the laws of any state * * * may be consolidated with a national banking association located in the same state * * * on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and which agreement shall be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding * * *. Upon such a consolidation * * * the corporate existence of each of the constituent banks and national banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and the consolidated association shall be deemed to be the same corporation as each of the constituent institutions. All the rights and franchises and interests of each of such constituent banks and national banking associations in and to every species of property, real, personal, and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such consolidated national banking association without any deed or other transfer; and

such consolidated national banking association, By virtue of such consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights in the property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of the estates of lunatics and in every other judicial capacity, in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by any such constituent at the time of such consolidation: * *". (Title 12, U. S. C. A. Sec. 34 (a)).

The pertinent provisions of the Revenue Statutes are:

Schedule A-3 of Title VIII of the Revenue Act of 1926, as Amended by Section 723 (a) of the Revenue Act of 1932 (Title 26, U. S. C. A. Internal Rev. Acts, p. 290):

"3. Capital stock (and similar interests), sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subdivision 2, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation

or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not), on each $100 of par or face value or fraction thereof of the certificates of such corporation or other [33] organization (or of the shares where no certificates were issued), 4 cents, and where such shares or certificates are without par or face value, the tax shall be 4 cents or the transfer or sale or agreement to sell on each share (corporate share, or investment trust or other organization share, as the case may be)."

Schedule A-9 of Title VIII of the Revenue Act of 1926, as Amended, relating to the sales and transfers of bonds (Title 26 U. S. C. A. Internal Rev. Acts, p. 297):

"9. Bonds, etc., sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in subdivision 1 and of a kind the issue of which is taxable thereunder, whether made by an assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each $100 of face value or fraction thereof, 4 cents."

The pertinent Regulations which are applicable to both of the preceding sections are the two exempting provisions of Treasury Regulations 71, Article 35 (h) and (q) promulgated under the Revenue Act of 1926, approved July 27, 1928, as follows:

"Article 35: Sales and transfers not subject to tax.—The following transactions are not subject to the tax:

* * * * * * *

"(h) The transfer of shares or certificates of stock from the name of a deceased or resigned trustee to the name of a substituted trustee appointed in accordance with the terms of the trust agreement, which is a transfer resulting wholly by operation of law.

"(q) Transfers of shares or certificates of stock which result wholly by operation of law are not subject to the tax. Transfers of this character are those which the law itself will effect without any voluntary act of the parties, such as transfer of stock from decedent to executor."

The statute covering deeds of conveyance, Schedule A-8 of Title VIII of the Revenue Act of 1926 reads:

"8. Conveyances: Deed, instrument, or writing delivered on or after the 15th day after the date of the enactment of the Revenue Act of 1932 and before July 1, 1934 (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall

be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof, 50 cents. This subdivision shall not apply to any instrument or writing given to secure a debt." (Title 26, U.S.C.A., Internal Rev. Acts, p. 297). [34]

Sporadically during our history, when financial necessities created by war or as the aftermath of war have arisen, the Congress has extended the field of federal taxation to include stamp taxes similar to the foregoing. They should be distinguished from purely excise or other taxes in which stamps are used as the paraphenalia for convenient collection. These tax statutes are passed exclusively for the purpose of raising revenue. Raybestos-Manhattan, Inc. v. United States, 296 U. S. 60. The breadth of the scope of the tax as defined in the statute requires the court to be strict in subjecting transfers to the tax. Founders General Corp. v. Hoey, 300 U. S. 268. They cover transfers of the mere legal title to the property involved by a trustee. Hartley v. Commissioner, 295 U. S. 216, 220.

From the reading of the foregoing excerpts from the statute, it can be seen that consideration of

this case necessarily divides itself into two parts: (1) Those taxes assessed against the claimed transfer of bonds, stocks and other securities and (2) the tax assessed against the claimed transfer of the real estate. The first classification must further be subdivided between (a) those securities which the bank had in its security account in which it had both the legal and beneficial title and (b) securities to which the bank had only legal title and which it held in trust.

1. As to the first group involving the securities, the plaintiff contends the tax to be improperly levied on the ground that the transfer of such securities resulted exclusively from operation of law. It bases this contention on the two Treasury Regulations heretofore quoted. Defendant's position is that the transfer of title was not wholly resultant from operation of law but that the operation of law was the mere culmination of the voluntary acts of the stockholders and directors of the two corporations which were the true motive force in the transfer.

Plaintiff relies on United States v. Merchants Nat. Trust & Savings Bank, 9th Cir. 101 F. (2d) 399. The consolidation in that case was under the California bank consolidation law. (Sec. 31, California Bank Act; Deering's General Laws, 1927, Act 652, Sec. 31). It provided, as does the act here, that "the purchasing bank shall, ipso facto and by operation [35] of law and without further transfer, substitution, act or deed, and in all courts and places, be deemed and held to have succeeded and

shall become subrogated and shall succeed to all rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements; court and private trusts and other relations to any person, creditor, depositor, truster, principal or beneficiary of any court or private trust, obligations and liabilities of every nature, etc." That case involved only the trust assets to which the bank had legal but no beneficial title. Unquestionably, however, the basis upon which the court there decided the question was so broad as to make inevitable the conclusion that its decision would be the same as to securities contained in the bank's own investment account. The court relied upon the two exempting provisions of the Treasury Regulation heretofore cited and specifically held that a transfer under the California consolidation law was by operation of law and not by the voluntary act of the parties. It, therefore, held that Article 35 (q) of Treasury Regulation 71 applied. In addition, it held that where, under the California statute the business of the one corporate trustee was sold in solido to another trustee, the sale affected a successful resignation from its trust obligation and there was then appointed a substitute trustee who took over the trust. It concluded therefrom that Article 35.(h) of Treasury Regulation 71 controlled.

Defendant relies upon cases which, with the exception of those decided by the Court of Appeals of the Second Circuit, touch subjects so remote from the problem here as to be of no assistance in

the decision of this case. In Koppers Coal & Transportation Co. v. United States, Third Circuit, one of the constituent corporations in a merger transferred stock it owned to the resultant corporation. This merger was under the Delaware law which contained no provision similar to the United States banking act or to the California statute. It was necessary there for the constituent corporation to transfer its stock to the resultant corporation by endorsing and delivering it to the transfer agent for the issuance of new stock. The transfer was not effected by operation of law but by the positive act of the party. The question of the transfer by operation of law was only [36] injected into the case by the taxpayer who relied upon an entirely different regulation which covered mergers and not consolidations. The facts of that case do not touch the facts of this one at any material point.

It is in the Circuit Court of Appeals of the Second Circuit that the conflict with United States v. Merchants Nat. Trust & Savings Bank, supra, arises. That Court has held contrary to plaintiff's contention here. The first case was Weil et al. v. United States, 115 F. (2d) 999. There the New York Mortgage Commission, acting under an act passed for the relief of financial conditions during the depression, took over from the New York Superintendent of Insurance certain bonds and mortgages previously guaranteed by the New York Title and Mortgage Company. These bonds and mortgages had come into the possession of the Superin-

tendent of Insurance under the provisions of another act which simply gave him power to take them and hold them for the protection of investors. The task of the Mortgage Commission was broader. Under the law, its duty was to reorganize as well as to administer mortgage properties and to intermediate between the Superintendent of Insurance and the trustees for reorganization to be selected by the Court. In considering this case, the Second Circuit construed the two quoted Regulations squarely in support of defendant's position here. It held that, since the transfer to the trustees on reorganization could only be made with the consent of the owners of two-thirds of the mortgage investments, there was no transfer wholly by operation of law and that the tax was properly assessed. The rule was followed later in Niagara Hudson Power Corporation v. Hoey, 117 F. (2d) 414, for the same reasons expressed in the Weil case. Both of these cases were ones in which both legal and beneficial title were involved. In City Bank Farmers Trust Co. v. Hoey, 125 F. (2d) 577, the same question was presented except that it referred to the transfer of securities held in trust. Both of the Regulations heretofore quoted were considered by the Court. Both were rejected as inapplicable. The majority of the Court, in so deciding, stated: "We confess that it irks us to decide this issue against appellee," and "Regretfully, we hold that, on this point, the District Court erred." In a dissenting opinion, Judge Swan asserted his opinion that Article 35 (h)

of Regulations 71 [37] applied and that the Circuit Court of Appeals for the Ninth Circuit was right in its decision in United States v. Merchants Nat. Trust & Savings Bank, supra.

The situation, therefore, is that in the Second Circuit the Court unanimously and unequivocably held the tax applicable as to securities owned both legally and beneficially. On the case involving the tax on trust assets, the majority of the Court regretfully so held and the minority dissented. In the Ninth Circuit, the rule is that the transfer tax does not apply under either set of circumstances.

This Ninth Circuit decision is controlling upon me. Consequently, what I say concerning the merits of the problem need only be brief. None the less, I do venture my opinion concerning it. The problem consists solely of an analysis of the two Regulations. The question is—when the words "wholly by operation of law" are used, do they refer to the entire process of consolidation or do they refer merely to that portion of it referring to the transfer? Is the transfer separable? The importance of the two quoted Regulations makes necessary a brief discussion of the subject of administrative regulations in general. Unquestionably, this case cannot correctly be decided without some understanding of this troublesome problem.

Distinction must be made between two recognized classes of regulations. Those of the first class are promulgated under specific prospective authority from Congress granted because of Congress' recog-

nition of the obstacles preventing it from spelling out its answers to all the problems resulting from the act. The second group are promulgated under the authority of the delegated interpretative power to assist in the execution of a statute by the administrative agency. Often the necessity for interpretation comes from intentional legislative vagueness induced by exigencies in the progress of legislative manouvering. Gray, Nature and Sources of The Law (2d Ed.) 173. As to both groups, changing conditions and changing sets of problems make imperative some elasticity in the processes. In fact, frequently it is the recognition of the probability of changing conditions which causes the Congress to leave the task of prospectively spelling out the answers or of interpreting broad language to the administrative agency. Those regulations of the first class which text writers call legislative have [37A] the force of law upon promulgation. United States v. Grimaud, 220 U. S. 506. So long as they are confined within the limits of the statutory delegation, their force will be recognized by the courts even though the courts may consider them illiberal, inequitable or not conducive to the best results. Utah Power & Light Co. v. United States, 243 U. S. 389, 410.

To the extent that changed conditions may not alter a relationship between a legislative regulation and the problem for the solution of which it was promulgated, reenactment of the specific statute is of little weight in determining the validity of

the regulation. There is no true necessity for the alarm displayed by certain writers over the apparent disparity between the rulings of the Supreme Court in Helvering v. R. J. Reynolds Tobacco Co., 306 U. S. 110, and Helvering v. Wilshire Oil Co., Inc., 308 U. S. 90. To my mind, what is needed is a rationalization of the problem by permitting the court to ascertain whether there is a factual basis on which it can be concluded that the Congress intended to reenact the Regulation when it reenacted the statute. The difficulty with the rule in the past has been the necessity for its blind acceptance by the courts. No good ever comes from obstructing the efforts of inquiring minds which seek out the truth. Basically, the problem is one of interpretation. Success in interpretative technique requires it to be keyed to the essential characteristics of the modern law-making processes. The omniscience attributed by some courts to the Congress is astounding to one experienced in the handicaps of time-pressure by which the labors of members of that body are circumscribed. It appears to me that the way towards this rationalization has been pointed by the Supreme Court in Helvering v. Wilshire Oil Co., supra, and in White et al. v. Winchester Country Club, decided January 12, 1942, ... U. S. ...., and, by analogy in Interstate Commerce Commission v. Railway Labor Executives Association, decided March 2, 1942, ... U. S. ..... This rationalization should apply to legislative regulations where changed conditions make the reenactment

rule applicable and to all interpretative regulations.

Interpretative regulations are what Mr. Justice Jackson, in the Winchester Country Club case, characterized as "constructional crutches," [38] and their value lies in the fact that they either are the "substantially contemporaneous expressions of opinion of men who were active in the drafting of the statute", White v. Winchester Country Club, supra, or of such long standing as to merit the particular respect of the courts. Logan v. Davis, 233 U. S. 613; United States v. Joliet & Chicago Railroad Company, decided Jan. 19, 1942, ... U. S. ..... They may be both. Magruder v. Washington, Baltimore and Annapolis Realty Corp., decided April 13, 1942, ... U. S. ..... Regulations of this type may be ignored by the court even after reenactment if they are not uniform. United States v. Missouri Pacific Railroad Company, 278 U. S. 269, 280; or if they are ambiguous within themselves or are inconsistent with each other. Burnet v. Chicago Portrait Co., 285 U. S. 1, 16. Any regulation so ambiguous and inconsistent as to be impossible of interpretation in itself is obviously valueless in its function of assisting in the understanding of the statute it was supposed to simplify. The two regulations involved here are in the interpretative category. The problem in this case is to determine whether their use is proscribed by the rule in the Missouri Pacific and the Chicago Portrait cases. If they are, nothing new was added to them by the

reenactment of the statute after their promulgation.

Any value for interpretative purposes possessed by these two regulations is destroyed by their own ambiguity and inconsistency. They each seek to exempt transfers resulting wholly by operation of law. They each specifically include in that category examples patently outside that category. A transfer arising from a trustee's resignation is never one by operation of law. Neither is one to the executor of an estate. Each of these transactions requires the purposeful, active intervention of one of the parties. "An estate is said to 'devolve' on another when by operation of law, and without any voluntary act of the previous owner, it passes from one person to another; but it does not devolve from one person to another as the result of some positive act or agreement between them. The word is itself of intransitive significance, and does not include the result of an act which is intended to produce a particular effect. It implies a result without the intervention of any voluntary actor. Francisco v. Aguirre, 29 Pac. 495, 497, 94 Cal. 180; First Nat. [39] Bank of San Jose v. Menke, 60 Pac. 675, 677, 128 Cal. 103" Volume 3, Words and Phrases (Old Series), page 2050." Life Estates created by marriage under Curtesy and Dower Statutes result from operation of law but those created by will do not. 17 R.C.L. 616. This because the primary purpose of the act of making the will was the creation of the estates. In a marriage that result is only incidental.

The Federal courts have recognized the distinction in those cases where under Equity Rule 27 (New Federal Rules of Civil Procedure, Rule 23) the plaintiff in a stockholders suit is required to allege that he was "a shareholder at the time of the transaction of which he complains or that his share thereafter devolved upon him by operation of law." McQuillon v. National Cash Register Co., 112 F. (2d) 877, 882; Whitaker v. Whitaker Iron Co., 249 F. 536.

It may lie within the province of Congress for tax purposes to endow transactions with legal attributes they do not possess. Credit Alliance Corporation v. Commissioner, 42 B.T.A., 1020; Helvering v. Credit Alliance Corporation, 122 F. (2d) 361. No such power is given to the executive in the promulgation of interpretative regulations. To assume the propriety of the delegation of such power is to ignore the distinction made by Justice Cardozo in his dissent in Panama Refining Co. v. Ryan, 293 U. S. 388, 440, and his concurring opinion in Schechter Corp. v. United States, 295 U. S. 495, 551. As he indicated, delegated power must be canalized within banks that keep it from overflowing. It can not be unconfined and vagrant.

The further fatal weakness of plaintiff's position is that it urges me to use these unsound constructional crutches as the bases for an analogy which does not fall within the broadest possible meaning of the language of the regulation. That I can not do. Pound, Courts and Legislation, 77 Cent. L. J.

219. The intent of the Regulations is clear. It is to exempt transfers resulting wholly by operation of law. Advantage can not be taken of the use of erroneous examples in the faulty Regulations to extend their errors into fields they do not touch.

If this question was one of first impression in this Circuit, I would hold the assessments on this phase of the case to be proper. However, [40] in view of United States v. Merchants Nat. Trust & Savings Bank, supra, judgment for the return of these particular assessments must be entered.

2. The next question involves the tax upon the real estate. It will be noted that this section of the statute is much more restricted than are the others which we have been considering. It requires that "the deed, instrument, or writing delivered * * * whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons." There are 42 Regulations applicable to this section. Counsel have referred to many of them and have argued that I should construe the statute in the light of all of them. I have patiently tried to fit together the various Regulations in an effort to evolve therefrom a pattern which would be of assistance in construction. It is clear that those who wrote the Regulations had no such pattern in contemplation. To attempt to devise such an effective pattern here is impossible. One might as well attempt to fit together a jig saw puzzle which has no pattern. Only

Article 75 of the Regulations is of value. It reads:

> "The act requires that the person who makes, signs, or issues any instrument taxable thereunder shall affix and cancel the revenue stamps."

The only person who made, signed or issued any instrument in this transfer was the Deputy Comptroller of the Curreney who signed the certificate of consolidation. Reasoning from which it might be concluded that he should have affixed revenue stamps thereon would be artificial. The only case submitted upon this phase is Carpenter v. White, 80 F. (2d) 145. It contains nothing of value here. It involved the transfer of real estate by deeds of two corporations in a non-statutory merger. It was decided exclusively upon the question of fact as to whether or not there was consideration for these deeds. In the case at bar, the tax was improperly assessed. There was no deed, instrument or writing delivered. No lands, tenements or other realty were sold. There was no purchaser to whom any land, tenements or realty were granted, assigned, transferred or otherwise conveyed or vested in. Of particular importance upon this point is the provision of the banking statute, 12 U.S.C.A. Sec. 34 (a) reading: [41]

> "The corporate existence of each of the constituent banks and national banking associations participating in such consolidations shall be merged into and continued in the consolidated national banking association and the con-

solidated association shall be deemed to be the same corporation as each of the constituent institutions."

An examination of the original statutes reveals that this particular provision became a part of the act by virtue of the amendment of June 16, 1933, 48 Stat. 190. The original Act of November 7, 1918, 40 Stat. 1043, simply provided for the consolidation of national banking associations. This was enlarged by the Act of February 25, 1927, 44 Stat. 1224, to include state banks. The amendment of June 16, 1933, was a part of the general banking act of that year which involved all of the ramifications of the national banking statutes and resulted from the experience in and lessons learned from the bank collapse in the spring of that year. I have carefully examined the legislative record endeavoring to ascertain the specific purpose of the inclusion of this particular language. I find nothing in that record which directly answers the question. However, by reading all of the debates on the floor of both Houses of Congress, I am convinced that the explanation is clear and simple. Those debates indicate clearly the knowledge of and interest in, by Members of Congress, the long-standing controversy between the national and state banking systems in this country. They show the jealousies which long existed between the two systems and the determined effort on the part of each to prevent proselyting by the other. It is apparent from the discussions that even the tragedy of the bank col-

lapse and the hardships of the bank holiday had not resulted in a sufficient attitude of cooperation upon the part of the state banks for strengthening the banking structure of the country by means of consolidation with stronger national banks. To quote from these discussions or even to make reference to the innumerable times when this issue arose during the First Session of the 73d Congress would unduly tax this opinion. Merely by way of example, I refer to the colloquy between Senators Glass, Costigan and Cousins. Congressional Record, Vol. 77, Part 4, p. 3727, et seq; and the colloquy between Congressmen Steagall and May, Congressional [42] Record, Vol. 77, Part 4, p. 3837 et seq; and the speech by Congressman Patman, Congressional Record, Vol. 77, Part 4, p. 3840 et seq. To one familiar with the course of procedure of Congressional debates and the methods used by the Congress in the accomplishment of results, it is apparent that this particular amendment was injected into the law to speed up state and national consolidations. It is a difficult statute to interpret. For a new corporation to be created and to be deemed the same corporation as each of the constituent institutions, which constituents are to be continued in the consolidated corporation, is an anomaly in the law. When Koppers Coal & Transportation Co. v. The United States, supra, was presented to the Circuit Court of Appeals for the Third Circuit, counsel for the taxpayer urged that the same result had occurred under the Delaware Stat-

ute which contained no such provision. Judge Biggs emphatically rejected the theory on the ground that it was "metaphysical." The action of the Congress, in writing it into the Federal statute takes it out of the realm of metaphysics. Regardless of how the statute might be characterized, unquestionably in consolidations effected under it, there was no grant, assignment, transfer or conveyance of real estate on which the stamp tax provided by Schedule A Title VIII of the Revenue Act of 1926, as amended, could be assessed.

3. Plaintiff further seeks recovery of the amount paid on the compromise settlement of criminal liability under Sec. 802 of the Revenue Act of 1926, Title 26 U.S.C.A. Internal Revenue Acts, p. 285. Since I have held that there was no tax due, the logic of the situation would seem to indicate that plaintiff's claim should be granted. However, that is not the law. Compromises authorized by Title 26 U.S.C.A. 3761 (a) are binding and final. Backus v. United States, 59 F. (2d) 242. Certiorari denied, 289 U. S. 610; Walker v. Alamo Foods Co., 16 F. (2d) 694. Certiorari denied, 274 U. S. 741; Shaw & Truesdell Co. v. United States, 1 Fed. Supp. 834. Such a result in this case is unfortunate. The highly debatable character of this assessment should have induced the Collector to desist from his threats of criminal prosecution. They smack too much of the political philosophy of subservience of the individual to the state which today [43] threatens the world. Public officials in a democracy

should learn that only those deserve power who are willing to use it sparingly.

Judgment will be entered in accordance with this opinion.

L. B. SCHWELLENBACH
United States District Judge

April 20, 1942.

[Endorsed]: Filed April 20, 1942. [44]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action having come on for trial before the court without a jury upon the pleadings and proofs adduced by counsel for the respective parties, the court makes the following

FINDINGS OF FACT

1. Plaintiff brings this action against the United States pursuant to the provisions of Section 1122 (c) of the Revenue Act of 1926 amending paragraph 20 of Sec. 24 of the Judicial Code, U. S. C. A. Title 28, Sec. 41 (20).

2. Prior to December 28, 1935, the First National Bank of Seattle was a national banking association duly formed under the provisions of the National Banking Act.

3. The Spokane and Eastern Trust Company was a state bank and trust company organized and

existing under the laws of the State of Washington. As a trust company it held in trust for certain beneficiaries certain bonds and stock, the legal title to which was vested in it as trustee, executor, administrator, guardian or in other fiduciary capacities.

4. As a state bank the said Spokane and Eastern Trust Company likewise held certain real estate, including its banking premises and certain bonds and other securities, to all of which real estate, bonds and securities it held the legal title as a part of its corporate assets. [45]

5. On December 28, 1935, pursuant to Sec. 331, Chapter 614 of the Act of August 23, 1935, U. S. C. A. Title 12, Sec. 34a, the First National Bank of Seattle and the Spokane and Eastern Trust Company, consolidated, becoming, pursuant to such consolidation, Seattle-First National Bank, a national banking association, plaintiff herein.

6. Pursuant to this consolidation the corporate existence of each of the constituent banks participating in the consolidation was merged into and continued in the consolidated national banking association resulting therefrom, Seattle-First National Bank, and all the rights of the Spokane and Eastern Trust Company in the real estate and stock and bonds owned by it, the title to which it held as a part of its corporate assets, were, pursuant to said section of the National Bank Act, deemed to be transferred to and vested in the consolidated na-

tional banking association without any deed or other transfer, and the said Seattle-First National Bank became the owner thereof solely by operation of law. Likewise the consolidated national banking association, plaintiff herein, by virtue of such consolidation and without any order or other action on the part of any court or otherwise, became entitled to hold and enjoy the same and all rights of property as trustee, executor, administrator, guardian or other fiduciary as the Spokane and Eastern Trust Company held at the time of the consolidation, and the legal title to the said assets held by the Spokane and Eastern Trust Company, in trust as aforesaid, passed to the plaintiff herein by virtue of said consolidation solely by operation of law.

7. Thereafter the Treasury Department of the United States, through its Internal Revenue Service, made an examination of the assets held by the plaintiff as trustee, executor, administrator, guardian and in other fiduciary capacities which had formerly been held by the Spokane and Eastern Trust Company in a like capacity and of the real estate and other assets owned by the Plaintiff which were formerly owned by the Spokane and Eastern Trust Company and asserted that the plaintiff as trustee had acquired the said assets held in the said trust accounts by [46] a transfer taxable under the Revenue Acts of the United States and required the plaintiff to pay on account of said trust assets the sum of $673.88 by purchasing and affixing to the various stock and bonds and

other instruments held as trust assets stamps in the said total amount, and the plaintiff did pay the said amount by purchasing said stamps and affixing the same to the said instruments. The Treasury Department of the United States likewise asserted that the plaintiff had acquired the real estate and banking premises, together with the bonds and other securities held by it, as owned assets by a transfer taxable under the Revenue Acts of the United States and required the plaintiff to pay on account of said owned assets the sum of $1,057.60, consisting of a transfer tax upon the said real estate and banking premises of $500, upon the bonds and securities of $457.60 and the sum of $100 in compromise of criminal liability under Sec. 802 of the Revenue Act of 1926, Title 26 U. S. C. A., Sec. 376 (a), by purchasing and cancelling stamps in a total amount of $957.60 and by paying in compromise of said criminal liability the sum of $100 and the plaintiff did pay the said amount by purchasing the said stamps and cancelling the same and paying the sum of $100 in compromise.

8. Payment of the said transfer taxes and of the said $100 in compromise was made January 25, 1937.

9. On March 23, 1939, plaintiff filed a claim for refund of the said stamp taxes assessed upon the asserted transfer of the assets held by plaintiff in the trust accounts in the total sum of $673.88, together with interest thereon from the date of payment, January 25, 1937, and filed a further claim for the refund of the stamp taxes assessed upon the

asserted transfer of the real estate, banking premises and other owned assets held by the plaintiff as owned assets in the total sum of $957.60, together with a refund of the compromise in the sum of $100 assessed and collected, together with interest thereon from date of payment, January 25, 1937. [47]

10. On December 23, 1940, the said claims in the respective amounts of $673.88, together with interest thereon, and in the sum of $957.60, together with interest thereon, together with the compromise in the sum of $100, were rejected and refused.

Dated May 14, 1942.

L. B. SCHWELLENBACH
United States District Judge

From the foregoing facts the court concluded as a matter of law:

CONCLUSIONS OF LAW

1. The Treasury Department of the United States, through its Internal Revenue Service, has erroneously and illegally assessed and collected Internal Revenue taxes from the plaintiff without authority of law and the plaintiff is now entitled to recover the sum of $1,631.48, together with interest thereon from January 25, 1937, at the rate of 6% per annum to a date within thirty days preceding the date of payment, as prescribed by Sec. 177 of the Judicial Code, as amended, Title 28 U.S.C.A. Sec. 284.

2. Plaintiff is not entitled to recover the sum of $100 paid by it in compromise of the criminal liability pursuant to Sec. 802 of the Revenue Act of 1926, Title 26 U.S.C.A., Sec. 276 (a).

3. Plaintiff is entitled to recover its costs herein to be taxed.

Dated May 14th, 1942.

L. B. SCHWELLENBACH
United States District Judge

Presented by

ARNOLD L. GRAVES

Copy received April 25, 1942.

EDWARD M. CONNELLY
HARVEY ERICKSON
Attorneys for Defendant

By TAYLOR

[Endorsed]: Filed May 14, 1942. [48]

In the District Court of the United States
for the Eastern District of Washington
Northern Division

No. Civ. 218

SEATTLE-FIRST NATIONAL BANK
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

This cause having come on to be heard upon the pleadings and upon the proofs adduced by the parties hereto and the court having made and entered its findings of fact and conclusions of law.

It Is Adjudged and Decree that:

1. Plaintiff have judgment against the defendant for the sum of $1,631.48, together with interest thereon from January 25, 1937, at the rate of 6% per annum to a date within thirty days preceding the date of payment as prescribed by Sec. 177 of the Judicial Code, as amended, Title 28 U. S. C. A. Sec. 284, together with its costs herein to be taxed.

Approved, Clerk is directed to enter.

Dated, May 14, 1942.

L. B. SCHWELLENBACH
United States District Judge

Presented by

ARNOLD L. GRAVES

Copy received April 25, 1942.

EDWARD M. CONNELLY
HARVEY ERICKSON
Attorneys for Defendant
By TAYLOR

[Endorsed]: Filed May 14, 1942. [49]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS NINTH CIRCUIT

Notice is hereby given that the defendant, United States of America, hereby appeals to the Circuit Court of Appeals, Ninth Circuit, from the final Judgment entered in this action on May 14, 1942.

EDWARD M. CONNELLY,
United States Attorney
HARVEY ERICKSON
Assistant United States
Attorney
Attorneys for Defendant
332 Federal Building

Copy mailed to Graves, Kizer & Graves, Attorneys for Plaintiff this 11th day of August, 1942.

A. A. LaFRAMBOISE,
Clerk, U. S. District Court

[Endorsed]: Filed August 11, 1942. [50]

[Title of District Court and Cause.]

CONCISE STATEMENT OF THE POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Comes now the defendant appellant United States of America and makes this concise statement of points upon which it intends to rely on appeal:

1. The Court erred in ordering and entering judgment against defendant and in failing to dismiss plaintiff's complaint.

2. The findings do not support the judgment or the Court's conclusions of law.

3. The Court erred in making and entering Finding No. 6 for the reason that it is not supported by the evidence and consists of conclusions of law rather than a finding or findings of fact, or it involves a mixed question of fact and law.

4. The Court erred in holding (Conclusion of Law 1) that the taxes for which recovery was granted were erroneously and illegally assessed and erroneousy and illegally collected from plaintiff.

5. The Court erred in holding (Conclusion of Law 3) that the plaintiff is entitled to recover its costs herein.

6. The Court erred in determining that the transfer and/or delivery to the plaintiff of the corporate stocks and bonds, to which the constituent state bank had both legal and beneficial title, was not subject to the stamp tax and occurred solely by operation of law.

7. The Court erred in determining that the delivery and/or transfer to the plaintiff of the corporate stocks and bonds, to which the constituent state bank held mere legal title in various trust [51] capacities, was not subject to stamp tax and occurred solely by operation of law.

8. The Court erred in determining that the transfer to or vesting in plaintiff of the real estate owned by the constituent state bank did not result in stamp tax liability and occurred solely by operation of law.

EDWARD M. CONNELLY
HARVEY ERICKSON
Attorneys for defendant appellant United States of America
332 Federal Bldg.,
Spokane, Wash.

Copy received this 1st day of September, 1942.

GRAVES, KIZER & GRAVES
Attorneys for plaintiff appellee

[Endorsed]: Filed Sept. 1, 1942. [52]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD TO CONSTITUTE RECORD ON APPEAL

Comes now the defendant appellant United States of America and hereby designates the portions of

the record, proceedings and evidence to be contained in the record on appeal in the above-entitled cause, to-wit:

1. Complaint
2. Answer
3. Pre-Trial Order dated April 1, 1942
4. Pre-Trial Order dated March 12, 1942
5. Exhibits "A", "B", "C", "D", and "E"
6. Clerk's minutes at time of trial showing testimony introduced only for identification of Exhibits
7. Opinion of Court dated April 20, 1942
8. Findings of Fact and Conclusions of Law
9. Judgment
10. Notice of Appeal
11. Statement of Points to be relied upon

EDWARD M. CONNELLY
HARVEY ERICKSON
Attorneys for defendant appellant United States of America
332 Federal Bldg.,
Spokane, Wash.

Copy received this 1st day of September, 1942.

GRAVES, KIZER & GRAVES
Attorneys for plaintiff appellee

[Endorsed]: Filed Sept. 1, 1942. [53]

[Title of District Court and Cause.]

United States of America
Eastern District of Washington—ss.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing typewritten pages numbered 1 to 53 inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals as called for by the Designation of Portions of Record to Constitute Record on Appeal as the same remain on file and of record in the office of the Clerk of said District Court, and that the same constitutes the record on appeal of United States of America from the final judgment of the District Court of the United States for the Eastern District of Washington to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, California.

In Witness Whereof, I have hereunto subscribed my nan. and affixed the seal of the aforesaid District Court, this 16th day of September, A. D. 1942.

[Seal] A. A. LaFRAMBOISE,
Clerk; U. S. District Court,
Eastern District of Washington.

[Endorsed]: No. 10254. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Seattle-First National Bank, a national banking association, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed September 18, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10254

UNITED STATES OF AMERICA,

Appellant,

vs.

SEATTLE-FIRST NATIONAL BANK,

Appellee.

CONCISE STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY UNDER RULE 19-6 (C.C.A. 9)

Comes now the appellant United States of America and makes this concise statement of points upon which it intends to rely on appeal:

1. The Court erred in ordering and entering judgment against defendant and in failing to dismiss plaintiff's complaint.

2. The findings do not support the judgment or the Court's conclusions of law.

3. The Court erred in making and entering Finding No. 6 for the reason that it is not supported by the evidence and consists of conclusions of law rather than a finding, or findings of fact, or it involves a mixed question of fact and law.

4. The Court erred in holding (Conclusion of Law 1) that the taxes for which recovery was granted were erroneously and illegally assessed and erroneously and illegally collected from plaintiff.

5. The Court erred in holding (Conclusion of Law 3) that the plaintiff is entitled to recover its costs herein.

6. The Court erred in determining that the transfer and/or delivery to the plaintiff of the corporate stocks and bonds, to which the constituent state bank had both legal and beneficial title, was not subject to the stamp tax and occurred solely by operation of law.

7. The Court erred in determining that the delivery and/or transfer to the plaintiff of the corporate stocks and bonds, to which the constituent state bank held mere legal title in various trust capacities, was not subject to stamp tax and occurred solely by operation of law.

8. The Court erred in determining that the transfer to or vesting in plaintiff of the real estate

owned by the constituent state bank did not result in stamp tax liability and occurred solely by operation of law.

EDWARD M. CONNELLY
United States Attorney
HARVEY ERICKSON
Assistant United States Attorney
Attorneys for Appellant
United States of America
332 Federal Building
Spokane, Washington

Copy received this 1st day of September, 1942.

GRAVES, KIZER & GRAVES
Attorneys for Appellee

[Endorsed]: Filed Sep. 4, 1942.

[Endorsed]: Filed Sep. 18, 1942.

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED IN THE RECORD ON APPEAL

To the Clerk of the Circuit Court of Appeals for the Ninth Circuit:

Pursuant to the provisions of Rule 19, Subdivision 6, of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, Appellant

hereby designates as the record to be printed as the record on this appeal the entire transcript of record heretofore docketed in this Court, including appellant's statement of points on which it intends to rely, which also have been filed in this Court; also this designation.

SAMUEL O. CLARK, JR.,
Assistant Attorney General.

Of counsel:

EDWARD H. CONNELLY,
United States Attorney.

A copy of the foregoing designation of record was sent to counsel for appellee, Messrs. Graves, Kizer and Graves, Old National Bank Building, Spokane, Washington, this 24th day of September, 1492.

[Endorsed]: Filed Sep. 26, 1942.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from proceedings of Monday, April 12, 1943

No. 10254

UNITED STATES OF AMERICA, APPELLANT

v.

SEATTLE-FIRST NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, APPELLEE

Order of Submission

Before GARRECHT, HANEY, and HEALY, Circuit Judges.

Ordered appeal herein argued by Mr. George H. Zeutzius, Special Asst. to the Attorney General, counsel for appellant, and by Mr. Arnold L. Graves, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from proceedings of Monday, May 24, 1943

No. 10254

UNITED STATES OF AMERICA, APPELLANT

v.

SEATTLE-FIRST NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, APPELLEE

Order directing filing of opinion, and filing and recording of judgment

Before GARRECHT, HANEY, and HEALY, Circuit Judges.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

541863—43

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10254—May 24, 1943

UNITED STATES OF AMERICA, APPELLANT,

v.

SEATTLE-FIRST NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, APPELLEE.

Upon appeal from the District Court of the United States for the Eastern District of Washington, Northern Division

Before GARRECHT, HANEY, and HEALY, Circuit Judges.

HEALY, Circuit Judge: The question presented here is whether a statutory consolidation of banks under the National Bank Act (12 U. S. C. A. § 34a) involves liability for documentary stamp tax under § 800 and Schedules A–3, A–8, and A–9, Title VIII, Revenue Act of 1926, as amended.

In 1935 a state bank, the Spokane and Eastern Trust Company, consolidated with the First National Bank of Seattle under the name of Seattle-First National Bank. Upon the ratification of the consolidation agreement by the stockholders the comptroller of the currency issued the necessary certificate of approval, reciting that the directors and shareholders of both banks had complied with the provisions of the Act.

The Spokane and Eastern Trust Company owned real estate whereon its banking house was located and securities in which a portion of its capital and surplus was invested. It had title also to securities as trustee, executor, guardian, etc. Stamps for the documentary tax required by the statute in the case of conveyances of real estate and transfers of stocks and bonds were not purchased nor affixed to any documents. The collector exacted a tax from the consolidated bank on the theory that the consolidation had resulted in taxable transfers. On a suit for refund the bank had judgment and the government appeals.

The Act of November 7, 1918, as amended February 25, 1927, 12 U. S. C. A. § 34a, authorizes the consolidation of a state bank with a national banking association located in the same state. For reasons which will be apparent on reflection the Act provides for the continued corporate existence of the constituent banks participating in the consolidation, and the consolidated association is "deemed to be the same corporation as each of the constituent institutions." The statute further provides that "all the rights, franchises, and interests of each of such constituent banks and national banking associations in and to every species of property, real, personal, and mixed, and

choses in action thereto belonging, shall be deemed to be transferred to and vested in such consolidated national banking association without any deed or other transfer; and such consolidated national banking association, by virtue of such consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such constituent institution at the time of such consolidation: * * *"

In the case before us no deed, assignment or other instrument was executed to transfer real estate, stocks, bonds, or other property whether held in a fiduciary capacity or owned outright by the bank. The certificates were not endorsed, nor was there any delivery or change of possession other than that which may be implied from the consolidation. The government contends, however, that the transfers did not occur solely by operation of law, but that the execution of the consolidation agreement, itself an affirmative voluntary act, effected the transfers; hence the agreement was a taxable instrument within the purview of the Revenue Act and regulations thereunder.

In this circuit the point has been determined adversely to the position of the Treasury in *United States* v. *Merchants Nat. Trust & Savings Bank*, 101 F. 2d 399. Further elaboration of the discussion there would serve merely to encumber the reports. The Court of Appeals of the Second Circuit in *City Bank Farmers Trust Co.* v. *Hoey*, 125 F. 2d 577, has reached a different conclusion and apparently the First Circuit has also, *State Street Trust Co.* v. *Hassett*, 134 F. 2d 156, so that if we are wrong the government is in a favorable position to ask that we be set right.

Affirmed.

(Endorsed.) Opinion. Filed May 24, 1943. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 10254

UNITED STATES OF AMERICA, APPELLANT

v.

SEATTLE-FIRST NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, APPELLEE

Upon appeal from the District Court of the United States for the Eastern District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Eastern District of Washington, Northern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

(Endorsed.) Judgment. Filed and entered May 24, 1943. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 10254

UNITED STATES OF AMERICA, APPELLANT

v.

SEATTLE-FIRST NATIONAL BANK, APPELLEE

Order staying issuance of mandate

Upon application of Mr. Harvey Erickson, Assistant United States Attorney, counsel for the appellant, and good cause therefor appearing, it is ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including August 24, 1943; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS AGARRECHT,
United States Circuit Judge.

Dated: San Francisco, California, June 12, 1943.

(Endorsed.) Order, etc. Filed June 12, 1943. Paul P. O'Brien, Clerk.

Certificate of clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to record certified under rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-eight (98) pages, numbered from and including 1 to and including 98, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of Hon. Charles Fahy, Solicitor General of the

United States, counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 14th day of July A. D. 1943.

[SEAL]

PAUL P. O'BRIEN,
Paul P. O'Brien,
Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1943

Supreme Court of the United States

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1943